where the members of the Court thought that the damages awarded were not what they themselves would have given if they had been trying the case. It will be observed that the only case in which the Court of Appeal altered the amount of the award was where the permanent disability was negligible.

In the present case I find myself in a position similar to that of the Court of Appeal in *Loughran* v. *Armstrong*, *Drennan* v. *Greer* and *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.*, except that in those cases the damages were thought to be on the high side, while the sum awarded here seems to me to be on the low side. At the risk of appearing to be wise after the event, I do not think that $15,000 is the amount I would have awarded. I feel sure that I would have awarded more, but not a great deal more. On the other hand I am not, as was said by Morris L.J. in *Scott* v. *Musial* [5]:

"satisfied that the Judge has ..... made a wholly erroneous estimate of the damage suffered."

nor do I feel disposed to say, adapting the words of Diplock L.J. in *Bastow* v. *Bagley & Co. Ltd.* [7], that the sum awarded is one which is out of all proportion to the sum awarded to others in respect of similar physical injuries.

For these reasons I would dismiss the appeal as regards the quantum of damages.

I do not wish to say anything on the question of contribution and costs, as to which I agree with what has been said by the learned Chief Justice.

Appeal dismissed.

Solicitors: *Murphy & Dunbar*; *Bannon & Bailey*.

KIAW AIK HANG CO. LTD. v. PUBLIC PROSECUTOR

[O. Cr. J. (Adams J.) May 17, 1962]

[Muar — Originating Motions Nos. 4 and 5 of 1962]

Criminal Law and Procedure — Forfeiture of vehicle under s.92, Road Traffic Ordinance, 1958 — Hearing of owner — Finance Company's proper course — Criminal Procedure Code (Cap. 6), s.323.

Where the forfeiture of a vehicle is under section 92 of the Road Traffic Ordinance, 1958 a finance company's proper course would be to ask the judge to call for all the record under section 323 of the Criminal Procedure Code and to enquire into the propriety of the order of forfeiture on the ground that the finance company and not the defendant to the summons was the true owner of the vehicle which had been forfeited without a chance for them to be heard.

A Magistrate before ordering forfeiture under section 92(4) of the Road Traffic Ordinance should enquire as to whether the defendant is in fact the true owner of the vehicle or whether the vehicle is the subject of a hire-purchase agreement. If it transpires that the vehicle is the subject matter of a hire-purchase agreement, notice should be served on the finance company calling upon them to show cause as to why the vehicle should not be forfeited under section 92(4) and he should hear argument before deciding whether the vehicle should be forfeited or released.

ORIGINATING SUMMONS.

S. K. Lee for the applicants.

Hamzah bin Dato' Abu Samah (Deputy Public Prosecutor) for the respondent.

Adams J.: These were two applications by Motion under section 410 of the Criminal Procedure Code by a finance company who were the owners of two motor cars ordered by the learned Magistrate, Segamat, to be forfeited apparently under the provisions of section 92 of the Road Traffic Ordinance (No. 49 of 1958). But it transpires from the record that the two vehicles had not been seized under section 92(2) prior to the hearing of the summons. This is a prerequisite of any order of forfeiture under section 92(4). I would draw attention to the fact that section 410 of the Criminal Procedure Code only applies to cases where there has been an order of forfeiture under section 407 of the Criminal Procedure Code and does not apply generally to forfeitures made under the provisions of other statutes.

If the Magistrate purported to be acting under section 407 of the Criminal Procedure Code, his order of forfeiture was also unlawful as under section 407 an order of forfeiture can only be made in respect to property produced before the Court. The motor cars were not before the Court at the time the orders were made and were not in fact seized until the day following the conclusion of the case.

It would seem to me that in cases of this sort where the forfeiture is under section 92 of the Road Traffic Ordinance a finance company's proper course would be to ask the Judge to call for the record under section 323 of the Criminal Procedure Code and to enquire into the propriety of the order of forfeiture on the ground that the finance company and not the defendant to the summons was the true owner of the vehicle which had been forfeited without a chance for them to be heard.

It would also seem to me that Magistrates before ordering forfeiture under section 92(4) should enquire as to whether the defendant is in fact the true owner of the vehicle or whether the vehicle is the subject of a hire-purchase agreement. If it transpires that the vehicle is the subject matter of a hire-purchase agreement, notice should be served on the finance company calling upon them to show cause as to why the vehicle should not be forfeited under section 92(4) and he should hear argument before deciding whether the vehicle should be forfeited, or released.

I do not think that the procedure under section 410 was open to the applicants in the two cases before me, but it is clear from the records of the original proceedings that the seizures of the vehicles in both cases were illegal being made subsequent to the order of forfeiture. The order of forfeiture was, therefore, also illegal. On that ground only I consider that I should exercise my power of revision under section 325 of the Criminal Procedure Code and quash the order of forfeiture in both cases.

Order of forfeiture quashed.